

REMARKS

I. The Amendments

Following entry of the above amendments, claims 25-33 are pending in this case. Claim 25 has been amended and no new matter has been added. The following are non-exhaustive examples of where support for amended claim 25 is found in the application: page 15, line 2.

Applicants submit that claims 25-33 are in condition for immediate allowance. The following remarks address the Examiner's comments in the Office Action in the order presented in the Office Action.

II. Finality of the Office Action

Applicants respectfully request that the Examiner withdraw the finality of the Office Action. According to the Examiner, the amendments to claim 25 in Applicants' Amendment dated October 4, 2004 "necessitated the new ground(s) of rejection ...." Office Action, at 6. Applicants respectfully disagree.

The Examiner clearly indicated claim 25 as allowable "if rewritten in independent form" in the Office Action mailed June 2, 2004 ("prior Office Action"). Prior Office Action, at 6. The Examiner now alleges that it was "clearly evident that ... an inadvertent typo" lead to the Examiner's prior position. Office Action, at 2. The Examiner therefore takes the position that the finality of the current Office Action is justified as Applicants followed the Examiner's recommendation by rewriting claim 25 in independent form.

Applicants submit that the Examiner's position is improper. The Examiner's actions indicate an error on the part of the Patent Office and Applicants should not be burdened with finality of the current Office Action for an Office error. Applicants therefore request that the finality be withdrawn. Applicants respectfully request that the Examiner provide Applicants with an Advisory Action soon indicating withdrawal of finality (among other issues), so that Applicants have sufficient time to file a request under 37 C.F.R. 1.181, should the Examiner insist on the finality. Applicants appreciate the Examiner's efforts.

III. Election and Restriction

Claims 26-33 were withdrawn from consideration by the Examiner as allegedly directed to a non-elected invention. Applicants respectfully disagree.

In a communication mailed May 1, 2002 ("Communication"), the Examiner divided the claims into three groups and Applicants elected Group I for immediate prosecution. According to the Examiner, Group I claims were "drawn to nucleic acid, vector, expression system, method of use ...." Communication, at 2. Claims 26-33 are directed at the subject matter under Group I as defined by the Examiner. The Examiner's allegation that the subject matter of claims 26-33 has no "discernable structural and/or functional relationship to the" subject matter of elected Group I is incorrect.

For example, claim 25 refers to SEQ ID NOS 15 and 16. Claims 26-29 refer to SEQ ID NOS 13 and 14. Claims 30-33 refer to SEQ ID NOS 17 and 18. These SEQ ID NOS have structural and functional relationship because SEQ ID NOS 13 and 14 are directed at the entire protein encoded by ORF2 (application, page 21, lines 13-15) and SEQ ID NOS 15-18 are directed at proteins included in ORF2 (application, page 21, lines 17-23; Figure 1).

Applicants therefore request that the withdrawal of claims 26-33 be revoked and the claims be examined.

IV. Rejections under 35 U.S.C. §112, first paragraph

Claim 25 was rejected under 35 U.S.C. § 112, first paragraph, for lack of written description. Specifically, the Examiner alleges that a recitation of "amino acid sequences that are at least 70% homologous" would encompass certain subject matter not sufficiently described. Without acquiescing in this rejection and the reasons given therefor, Applicants respectfully submit that Claim 25 has been amended with entry of this Amendment. Applicants respectfully submit that new claim 25 is fully described in the application. Applicants request withdrawal of this rejection.

V. Rejections under 35 U.S.C. §102

Claim 25 was rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Genseq database accession No: AAQ27436. Without acquiescing in this rejection and the reasons given therefor, claim 25 has been amended with entry of this Amendment and that the rejection is thereby moot. Applicants request withdrawal of this rejection.

VI. Conclusion

Applicants respectfully submit that pending claims 25-33 are in condition for immediate allowance. The undersigned invites the Examiner to call (650) 838-4382 with any questions or comments. The Commissioner is hereby authorized and requested to charge any deficiency in fees herein to Deposit Account No. 50-2207.

Respectfully submitted,  
Perkins Coie LLP

Date: February 25, 2005

  
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